

§ 21.7636

38 CFR Ch. I (7–1–97 Edition)

(t) *Forfeiture for treasonable acts or subversive activities.* If a reservist must forfeit his or her educational assistance due to treasonable acts or subversive activities, the date of discontinuance of payment of educational assistance will be the later of—

- (1) The effective date of the award, or
- (2) The day before the date the reservist committed the treasonable act or subversive activities for which he or she was convicted.

(Authority: 38 U.S.C. 6104, 6105; Pub. L. 98-525)

(u) *Change in law or VA issue or interpretation.* If there is a change in applicable law or VA issue, or in the Department of Veterans Affairs's application of the law or VA issue, VA will use the provisions of § 3.114(b) of this chapter to determine the date of discontinuance of the reservist's educational assistance.

(Authority: 38 U.S.C. 5112, 5113; Pub. L. 98-525)

(v) *Independent study course loses accreditation.* If the reservist is enrolled in a course offered in whole or in part by independent study, and the course loses its accreditation (or the educational institution offering the course loses its accreditation), the date of reduction or discontinuance will be the effective date of the withdrawal of accreditation by the accrediting agency,

unless the provisions of § 21.7620 (c)(3) or (c)(4) apply.

(Authority: 10 U.S.C. 16136; 38 U.S.C. 3680A(a)(4))

(w) *Service Members Occupational Conversion and Training Act of 1992.* If a reservist enters a training program for the purpose of obtaining assistance under the Service Members Occupational Conversion and Training Act of 1992, the effective date of discontinuance of educational assistance shall be the date on which the reservist entered the job training program.

(Authority: Sec. 4492(a), Pub. L. 102-484, 106 Stat. 2765-2766)

(x) *Except as otherwise provided.* If the reservist's educational assistance must be discontinued for any reason other than those stated in the other paragraphs of this section, VA will determine the date of discontinuance of payment of educational assistance on the basis of facts found.

(Authority: 38 U.S.C. 5112(a), 5113; Pub. L. 98-525)

[53 FR 34740, Sept. 8, 1988, as amended at 57 FR 57106, Dec. 3, 1992; 58 FR 51783, Oct. 5, 1993; 61 FR 29304, June 10, 1996]

§ 21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in § 21.7639, the monthly rate of educational assistance payable to a reservist is the amount stated in this table:

| Period of pursuit of training | Training time | | | |
|-----------------------------------|---------------|----------|---------|---------|
| | Fulltime | ¾ time | ½ time | ¼ time |
| Oct. 1, 1995–Sept. 30, 1996 | \$197.90 | \$148.42 | \$98.95 | \$49.47 |
| On or after Oct. 1, 1996 | 203.24 | 152.43 | 101.62 | 50.81 |

(2) The monthly rate of basic educational assistance payable to a reservist for pursuit of apprenticeship or other on-job training full time is the rate stated in this table:

(i)

| Training period | Monthly rate | |
|--|-----------------------------|--------------------------|
| | Oct. 1, 1995–Sept. 30, 1996 | On or after Oct. 1, 1996 |
| First six months of pursuit of training | \$148.42 | \$152.43 |
| Second six months of pursuit of training | 108.94 | 111.78 |
| Remaining pursuit of training | 69.26 | 71.13 |

(ii) Full-time training will consist of the number of hours which constitute the standard workweek of the training

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establishment, but not less than 30 hours unless a lesser number of hours is established as the standard work-week for the particular establishment through bona fide collective bargaining between employers and employees.

(3) The monthly rate of educational assistance payable to a reservist for pursuit of a cooperative course is the rate stated in this table:

| Period of pursuit of training | Monthly rate |
|-----------------------------------|--------------|
| Oct. 1, 1995–Sept. 30, 1996 | \$158.32 |
| Oct. 1, 1996–Oct. 8, 1996 | 162.59 |
| On or after Oct. 9, 1996 | 203.24 |

(Authority: 10 U.S.C. 16131(b), (c); sec. 12009(c), Pub. L. 103-66, 107 Stat. 416)

(b) *Limitations on payments.* VA may withhold final payment until VA receives proof of the reservist's enrollment and adjusts the reservist's account.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3680(g))

[61 FR 29305, June 10, 1996, as amended at 62 FR 27964, May 22, 1997]

§ 21.7639 Conditions which result in reduced rates or no payment.

The payment of educational assistance at the monthly rates established in § 21.7636 shall be subject to reduction, whenever the circumstances described in this section arise.

(a) *Withdrawals and nonpunitive grades.* (1) Withdrawal from a course or receipt of a nonpunitive grade affects payments to a reservist. VA will not pay benefits to a reservist for pursuit of a course from which the reservist withdraws or receives a nonpunitive grade which is not used in computing requirements for graduation unless the provisions of this paragraph are met.

(i) The reservist withdraws because he or she is ordered to active duty; or
(ii) Both of the following exist.

(A) There are mitigating circumstances, and

(B) The reservist submits a description of the circumstances in writing to VA either within one year from the date VA notifies the reservist that he or she must submit the mitigating circumstances, or at a later date if the reservist is able to show good cause why the one-year time limit should be extended to the date on which he or she

submitted the description of the mitigating circumstances.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3471, 3680(a), 5101, 5113; Pub. L. 102-127 (Aug. 1, 1990))

(2) If VA considers that mitigating circumstances exist because the reservist withdrew during a drop-add period or because the withdrawal constitutes the first withdrawal of no more than six credits after May 31, 1989, the reservist is not subject to the reporting requirement found in paragraph (b)(1)(ii)(B) of this section.

(Authority: 10 U.S.C. 16130(b), 38 U.S.C. 3680(a) (June 1, 1989))

(b) *No education assistance for some incarcerated reservists.* As is the case with reservists who are not incarcerated, VA will pay no educational assistance to reservists who are incarcerated and who are training less than one-half time. In addition, VA will pay no educational assistance to a reservist who—

(1) Is incarcerated in Federal, State or local penal institution for conviction of a felony, and

(2) Is enrolled in a course—
(i) For which there are no tuition and fees, or

(ii) For which tuition and fees are being paid by a Federal program (other than one administered by VA) or by a State or local program, and

(3) Is incurring no charge for the books, supplies and equipment necessary for the course.

(Authority: 10 U.S.C. 16136(b), 38 U.S.C. 3482(g); Pub. L. 98-525)

(c) *Reduced educational assistance for some incarcerated reservists.* (1) VA will pay reduced educational assistance to a reservist who—

(i) Is incarcerated in a Federal, State or local penal institution for conviction of a felony, and

(ii) Is enrolled in a course—
(A) For which the reservist pays some (but not all) of the charges for tuition and fees, or

(B) For which a Federal program (other than one administered by VA) or a State or local program pays all the charges for tuition and fees, but for which the reservist must pay for books, supplies and equipment.